

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Mark Schafer, et al.,

Case No. 3:06CV7084

Plaintiff

v.

ORDER

City of Defiance Police Department, et al.,

Defendant

This is a civil rights case in which the defendants have moved for dismissal with prejudice due to the failure of one of the plaintiffs, Andrea Schafer, to appear as scheduled for a deposition. That failure followed an order from this court for her to appear to be deposed by a date certain or have her complaint dismissed with prejudice.

Plaintiff was to appear at noon on December 28, 2006. She arrived at about 1:20 p.m., after defendants' attorney had left due to her non-appearance. According to plaintiffs' counsel, plaintiff failed to appear on time because she got lost driving to Toledo from Defiance, Ohio.

Plaintiffs' attention to the obligation to prosecute this action has can best be described nearly imperceptible. For a period of time she failed to keep her counsel informed about her whereabouts.

Nonetheless, I will give the plaintiff one last chance to get on board with her case. That chance will not come without a cost: she will be required to reimburse the defendants for the monies expended in having their attorneys attend the deposition and, if other costs were incurred, such as for a court reporter, to pay those costs as well.

Defendants' attorney shall provide a statement of fees and costs by March 15, 2007, to plaintiffs' counsel. Plaintiffs' counsel shall notify defendants' counsel by April 2, 2007, whether

plaintiff shall pay that amount, and when payment shall be tendered. Payment in full, shall, in any event, be made on or before June 1, 2007.

If plaintiff will not or cannot make such payment, defendants' motion to dismiss shall, on notice to the court, be granted; after all, plaintiff failed, despite an express order to do so, to appear for her deposition. That she got lost en route is no excuse, and certainly cannot be attributed to defendants or their attorneys.

If plaintiff makes such payment, or arrangements to do so by June 1, 2007, defendants' pending motion shall be overruled, without prejudice to renew.

In addition, plaintiff shall appear for her deposition [and that of her children, if sought by defendants' counsel] on or before April 16, 2007. Failure to do so shall result in dismissal of her complaint with prejudice.

It is, therefore,

ORDERED THAT:

1. On or before March 15, 2007, defendants to provide plaintiffs' counsel with a statement of fees and costs incurred as a result of plaintiff Andrea Schafer's failure to appear for her deposition as ordered;
2. Plaintiffs' counsel to notify defendants' attorneys about payment of said amount, as directed herein, by April 1, 2007; said payment to be made in full by June 1, 2007;
3. Plaintiff Andrea Schafer to appear, with minor children plaintiffs, if so desired by defendants, for deposition on or before April 16, 2007;
4. Leave granted to defendants to renew pending motion to dismiss with prejudice if the foregoing is not complied with; if compliance accomplished, parties to submit status report on or before April 15, 2007, requesting such further action as may be desired;

5. Prior schedule vacated; further scheduling held in abeyance pending compliance with this order, filing of status report or motion to dismiss, or on request of parties.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge